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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|------------------------|------------------|
| 10/506,307 | 09/01/2004 | Helmut Nather | 04317314 | 8327 |
| 7590 03/24/2005 Richard A Speer Mayer Brown Rowe & Maw P O Box 2828 Chicago, IL 60690-2828 | | | EXAMINER LO, WEILUN | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3747 | |

DATE MAILED: 03/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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|------------------------------|------------------------|---------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 10/506,307 | NATHER ET AL. | |
| | Examiner | Art Unit | |
| | Weilun Lo | 3747 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>09/01/2004</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Specification

1. The disclosure is objected to because of the following informalities: on page 4, line 28, "chamber 11" should be -- chamber cover 11 --.

Appropriate correction is required.

2. Claim 6 is objected to because of the following informalities: "the reed switch" lacks proper antecedent basis (note claim 2). Appropriate correction is required.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 3, 5, and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Haderer et al. (DE 19547097A1). Haderer et al. show a fuel delivery unit as claimed, including a surge chamber 14 in a fuel tank 12, a delivery pump 16 spaced apart from a fuel level sensor (38, 40) having a float 40 that is guided by a pipe.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Haderer et al. (DE 19547097A1). Haderer et al. show a fuel delivery unit substantially as claimed. It would have been obvious at the time of the invention for one of ordinary skill in the art to have made the pipe of the level sensor to have a constricting opening to connect the interior of the pipe with the fluid in the surge chamber in order to provide for dampened fuel level detection as sloshing of fuel during vehicular movement is well known and desirable to dampen so faulty fuel level signals are not easily produced.

8. Claims 2, 6, and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haderer et al. (DE 19547097A1) in view of either Sabatino et al. (US 4,253,332) or Tsujimoto (US 4,441,860). Haderer et al. show a fuel delivery unit substantially as claimed, however, do not specifically mention the type of fuel level sensor - such as, including a reed switch, and the reed switch connected directly to the pump. Sabatino et al. and Tsujimoto each separately teach that it is well known to use reed switches to detect the level of fuel or fluid in conjunction with a float. It would have been obvious at

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the time of the invention for one of ordinary skill in the art to have made the fuel delivery unit of Haderer et al. to include a reed switch in conjunction with a float as taught by either Sabatino et al. or Tsujimoto, and the reed switch connected directly to the pump as taught by Tsujimoto in order to provide a simple and automatic shut off control of the fuel delivery pump when the fuel level is too low.

9. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Haderer et al. (DE 19547097A1) in view of Sawert et al. (US 5,080,077). Haderer et al. show a fuel delivery unit substantially as claimed, however, do not specifically show the level sensor being fastened to a cover of the surge chamber. Sawert et al. are relied upon to teach that covers 38 are commonly used in a fuel surge chamber. It would have been obvious at the time of the invention for one of ordinary skill in the art to have made the fuel delivery unit of Haderer et al. to include a cover as taught by Sawert et al. and attach the fuel level sensor pipe to the cover in that such would be functionally equivalent to attaching it to the surge tank side wall as shown and is considered to be an obvious matter of design choice in that no new or unusual results would have been obtained.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Weilun Lo whose telephone number is (571) 272-4847. The examiner can normally be reached on 8:30AM TO 7:00PM M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Yuen can be reached on (571) 272-4856. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Weilun Lo
Primary Examiner
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